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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J. S., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J. S.,

Defendant and Appellant.

G043171

(Super. Ct. No. DL034320)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kimberly Menninger, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Rhonda Cartwright-Ladendorf and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

Following a contested jurisdictional hearing, the juvenile court sustained a petition alleging J. S., a minor, committed arson. It declared him a ward of the court and placed him on probation. Defendant contends the court's exclusion of third party culpability evidence deprived him of his right to present a defense. Finding no error, we affirm.

## FACTS

In January 2009, a male student at a high school entered the boy's restroom where he saw defendant standing at a urinal and smoke coming from the handicap stall. Defendant was still standing there when the student left.

Responding to the fire, a district safety officer entered the restroom and saw defendant running out. Several separate fires were burning in the restroom at that time and no one else was present. The fires had been intentionally set.

Defendant was interviewed later that day based on a report he was showing a photograph of the fire on his cell phone to other students. A search of his person revealed a lighter and a cell phone containing a photograph of the fire.

## DISCUSSION

During trial, defense counsel sought to introduce evidence of two other fires at the high school, claiming they were identical to the fire in the present case. Her offer of proof was that "there [were] several fires that happened before this incident and after this incident for which [defendant] could be accounted for by attendance records," which she asserted was relevant because "[t]he fires are substantially similar . . . , identical in nature . . . ." The court sustained the prosecutor's objection.

Later, defense counsel again attempted to present the evidence, stating the other fires were similar in nature to the one in this case because they occurred in the school's restrooms, "involve the same types of fires and . . . same type of materials used, [and] the same type modus operandi involved. And . . . when those fires occurred, [the minor] was somewhere completely different. [¶] And while he's not being charged [with those fires], it does show that there is a pattern . . . at that school to do those fires . . . which are so similar in nature that it . . . could most likely be the same person." When the court asked for an offer of proof that a defense expert would testify the fire in this case was so similar to the other ones that he or she believed they were set by the same perpetrator, defense counsel responded, "I haven't asked them that question." Although she had witnesses who would testify "something to that effect," she did not "know if they're going to say [it was the same perpetrator]." The court concluded the evidence was not "relevant until [she] could say that."

Defendant contends this ruling denied him his Sixth and Fourteenth Amendment rights to present a third party culpability defense. We disagree.

"A criminal defendant has a right to present evidence of third party culpability if it is capable of raising a reasonable doubt about his own guilt. The rule does "not require that any evidence, however remote, must be admitted to show a third party's possible culpability . . . . [E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." [Citation.]' [Citations.]" (*People v. Panah* (2005) 35 Cal.4th 395, 481.)

Here, defense counsel's offer of proof consisted only of evidence of two other fires that defendant did not set. She did not identify any particular person or the

evidence that might link him or her to the fires defendant was charged with. Nor could she establish the other fires were set by the same person.

Defendant maintains his only burden was to raise a reasonable doubt as to his own guilt and not to prove the same person committed the other fires or to identify that person. But even if so, his evidence did not provide the necessary link between a third person and the commission of the charged offense and was not inconsistent with him committing it. The evidence was thus irrelevant and inadmissible. (See *People v. DePriest* (2007) 42 Cal.4th 1, 43 [evidence of third party culpability properly excluded where it “did not tend to link anyone other than [the] defendant to ‘actual perpetration’ of the charged crime” and was not inconsistent with the defendant committing it]; see also *People v. Jackson* (2003) 110 Cal.App.4th 280, 286 [evidence someone else broke into victim’s home properly held immaterial where victim could not identify the attacker, meaning the defendant “could not be excluded as a possible perpetrator”].)

The trial court did not err in excluding the evidence and there was no violation of his constitutional right to present a defense. (*Holmes v. South Carolina* (2006) 547 U.S. 319, 327 [126 S.Ct. 1727, 164 L.Ed.2d 503] [Constitution allows judges to exclude speculative or remote third party culpability evidence that does not “sufficiently connect the other person to the crime”]; *People v. Prince* (2007) 40 Cal.4th 1179, 1243 [proper application of ordinary rules of evidence does not violate right to present a defense].)

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.